

THE PARTICULARS

Contraverted between the Town of LEITH and EDINBURGH may be reduced briefly into two Heads; Some Relate to the Point of Right, the rest are in Fact, and points of Grievance against the Town of EDINBURGH's Doing. Although their Right were Uncontraverted.

LEITH Claimes, First, the Benefit of a Contract past betwixt certain Persons, their Commissioners on the one part, and Queen Mary Dowager, in Name and Behalf of the Queen of Scotland her Daughter on the other part, dated the Penult of January 1555; By which the Queen Dowager declares, That at that same very minute of time, the Laird of Restalrig, had resigned the Superiority of Leith, in the said Q. Dowagers Hands, in Favours of the Town of Leith, to the Effect it might be Erected in a Free Burgh Royal; And therefore she obleidges her self, upon her Honour and Faith, to cause to be Erected the said Town accordingly; Leith paying to the Laird of Restalrige, 3000 pound Scots, and advancing some Timber to her Works at Leith, and the Inhabitants paying a yearly Duty of 7 s. 6 d. Scots, for each Tenement, to the Queen and her Successors; Accordingly Leith paid the 3000 pound to Restalrig, and advanced 10000 pounds worth of Timber to her Works, whereof they have the Discharges yet extant, and being willing according to the said Contract, to pay to her Heirs and her Successors, the said yearly Duty for each Tenement. And considering with all the great Benefit will thereby arise to the whole Common-Wealth, They humbly crave that his Highness will fulfill the Queens part of the said Contract, And Erect them in a free Burgh Royal, there being no place or Situation in Scotland more Commodious for a free Burgh.

EDINBURGH's Answers.

TO this Contract it is Answered for Edinburgh, First, However the Queen Dowagers Contract bears, That Restalrige had resigned Leith's Superiority in the Queens hands, to the Effect Leith might be Erected. Yet Restalriges own Resignation or Disposition bears no such thing, But expressly bears to the Queen her Heirs and Assignes. 2dly. The Contract is Contractis Conditionalli, either to Erect or Repay the Moneys. 3dly. The Contract could not bind the Queen being Minor; But the Law allows all Minors to Revoke, as well Princes as others, and she did Revoke, and thereafterwards disposed the Superiority to Edinburgh, Anno 1565. 4ly. Before the said Contract, the Laird of Restalrige had renounced in Favours of Edinburgh, all Girnelling of Cornes, selling of Wines, &c. in Anno 1398, Ratified by King James 4th, Anno 1510. 5thly. They have enjoyed the Superiority about 40 years, which cannot now be called in Question, after so long time as is statute by express Act of Parliament.

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To



Leith's Reply.

TO their Answers, *Leith* made thir Replys, Which Collonel *Bryan* omits in his Report, and therefore would be considered. To the 1st. Seeing the Eminant place wherein GOD hath placed Princes and Sovereign Rulers, doth Liberate them from the common Course of Law, and personal Execution against them, by Hornings, Inhibitions, such Legal Diligences as are not denyed to other Subjects, against any fellow Subjects. Therefore it is, that even in Law, a Princess Personal Contract or Stipulation is esteemed as obliging for Security to the Partie with whom the Stipulation or Contract is made, as if it were Real, and had all the other Formalities requisit in Contract between Subjects: And therefore, albeit *Restalrigs* Renunciation bears not, That he did the same, to the Effect *Leith* might be Erected. Yet seeing the Queen Dowagers Contract, which is of the same day the said Renunciation, and before the same Witnesses, bears expressly, and that *Restalrige's* receiving the 3000 pound from *Leith*, is the price of the said Resignation imports no less, These are equivalent as to *Restalrigs* own Renunciation had carryed in Favours of *Leith*. To the 2^d. Albeit it had been conditional to pay the Money, and the Q^{ueen} might have made her Election; Yet seeing the Money was never payed, the Election is now the Alternative, only prestable, and she could never have deprived them of the only disposing *Leith's* Superiority, unless he had first performed the other Alternative Condition. To the 3^d. The Queens Major (as is clear by her Revocation in Parliament,) the time of the said Contract, and Gift of *Baylirie*, which was Nine Moneths after her Revocation, in Anno 1555: The year beginning in *March* as it yet doth in *England*, and continued so till the year 1600: Neither could she ever have Revoked the Acts done in Favours of *Leith*, seeing her publick Revenue much increased thereby, whereas by the subsequent Deed, it was prejudged; *Edinburgh* having given nothing for it, neither could the Subsequent grant of the Superiority be any Revocation of the said Contract, because it is very consistent with the Right of Superiority in Mans person, for the Supream Magistrates to Erect most of the Royal Burrows in *Scotland* being of that Nature. To the 4th. These Particulars renounced, being personal Slaveries, or inconsistent with the common Liberty of a People, and are taken away by the Act of Union, And albeit they could be estimate *prædial* Servitudes, such as may be imposed, and due from one Village to another. yet they could not now be claimed by *Edinburgh* from *Leith*, because such Servitudes Confusion, so that after *Edinburgh* had acquired *Leith's* superiority in their own persons, they could not thereafter exact of them any *prædial* Sernitude, *quia res nemini servit*. To the 5th. Anent the 40 years prescription, *Leith* opones the continual Interruption by their Protestation at the beginning, against *Edinburgh's* Right and Suspensions, and addresses to the King and his Council, and others in Authority, and Deeds of Resistance, which hath occasioned some Blood-shed between the several Inhabitants, as is nortour.

LEITH'S Claim.

2. **L***Leith's* Claims the Benefite of a Commission of Bailery granted to them in *Feber*: (1555) under the Great Seal of *Scotland*, expressly relative to the aforesaid Contract; By which the Queen gives Power to the Town of *Leith's* Commissionrie to Exercise Jurisdiction within themselves, with advice of their own Town Council, with Power of using all their Rights and Priviledges of Superiority as fully as she, or the Laird of *Restalrig* could have done themselves; And that alwayes, and while they were erected in a Free Burgh Royal, at least

least untill the Queen should repay the 3000 Pound, and price of the Timber, which she never did.

City of EDINBURGH'S Answer.

2. **T**O the Commission of Bailery, Edinburgh Answers. 1mo. It was Personal to the particular Persons therein mentioned, and died with them. 2dly. Albeit it had not been Personal, quoad them; Yet it was Personal quoad the Queen; And could endure no longer than her Life, seeing there followed no Infeftment upon the said Gift of Bailery: 3dly. It was revoked, as was the preceeding Contract by her revocation Registered in Parliament. 4ly. It is Prescribed, Edinburgh having Posselt the Bailery thereof now 40 Years ut supra.

Leiths Replies.

2. **T**O the Bailery, *Leith* Replies. To the first Answer; Albeit the Persons be named in the Gift; Yet that makes not the Bailery personal, because the persons therein named were these, who were Commissioners for the whole Inhabitants of *Leith*, who had warrant in Write to do every thing for the saids Inhabitants, which they might have done themselves; So that what was done by them was *publico nomine*, doth clearly appear by the Gift it self, and deeds done thereupon: For it is not an ordinary Bailery as the Laird of *Restalrig*, or any other Barron was in use to appoint (as *Edinburgh* pretends) because it is not first to themselves to exhaust the Bailery and Jurisdiction personally, but an elected presentative of the whole Incorporation. 2do. The time of the indurance being *semper & eousque*, ever and while they were Erected, at least the Money payed, shews the Bailery was not personal to dy with the persons, but it was to continue ever until one of the conditions was performed. 3d. The said Office of Bailery in *Anno* (1568) Three years after *Edinburgh* had bought their pretended Superiority was exercised by other Inhabitants of *Leith* than their persons mentioned in the said Gift, which shews the Gift was not personal, as by a Charter and seifing *Anno* aforesaid and produced is made clear. To the second Answer being, that the Bailery was personal quoad the Queen, and died with her, because it wanted infeftment. It is Replyed; Yet the assertion is assured a Bailery, being but a bare Office may very well be transmitted without any Infeftment; And is sufficiently sufficient by Gift under the Great Seal, and is nottour in all the Offices of *Scotland*, especially this being a Bailery given to an Incorporation which cannot dy. To the 3d and 4th Answers annent the Bailery *Leith* Repeats their Reply to *Edinburgh*. 3d and 5th Answers annent the Contract.

Leith's Claim, as to the Matter of Fact and point of Grievance.

3. **L***Leith* Complaines first, That the most and greatest *Edinburgh* could pretend in and over *Leith*, is only as Barrons of *Restalrig*, by vertue of the aforesaid renunciation made to the Queens Disposition of the Superiority to them *Anno* 1565, nevertheless contrary to his Highnesses Ordinance, prescribing the particular way for Barron Courts; They in high contemp thereof impose their said Barron Bailerys with full of idignosing of all Causes what consequently soever they be, of Fyning, and Imprisoning their Inhabitants by themselves, without any concourse of the Neighbours direct, contrary to his Highness his said Act. The Bailies being strangers not Inhabiting within the Barrony.

Edin.

Edinburghs Answers.

3. **T**His Answered for the Town of *Edinburgh* to the 1st Grievance, that they have been in the use of *Leith* Magistrats, and Bailiffs these Hundred Years in that same manner as now they do; And that though the Bailiffs be Strangers to *Leith* and Indwellers in *Edinburgh*; Yet *Leith* hath no reason to complain, because their Magistrats are Burgeses of *Edinburgh*, though in all probability are more unsuspected either of Partiality or Faction, than if a Neighbour of *Leith* should be made Judge over his Neighbours and Brethren.

Leiths Replies omitted in Collonel Bryans Report.

3. **T**O the first Answer anent particular Grievances; The Town of *Leith* opposes their Complaint with the Tenor of his Highness Act of Union and Ordinance for Barron Courts, whereby all Heritable Bailerys without distinction are expressly discharged, notwithstanding any grant or custom in the contrair, and the particular manner of Electing Bailiffs, holding of Courts extant of their Power and way of Administrating of Justice to the People within their placing, or particularly set down, contrair to all which *Edinburgh* as Barron of *Restalrig* imposes upon *Leith* yearly, to Magistrates without regard of the said Act or Ordination; And if their Ancient custom of so doing should Justifie them; The like might be alledged for all the Barrons in *Scotland*, and thereby they should render his Highness Act altogether void and of none effect.

LEITH's Claim.

WHatever Cess is Imposed upon *Edinburgh*, The Magistrats without any Consent of the said Town of *Edinburgh*, lay such proportion thereof on them as they think fit, albeit they be neither part nor pertinent of *Edinburgh*, nor reapes any Benefit from them, but are Inslaved by them.

EDINBURGH's Answer.

TO the second it is Answered; That *Edinburgh's* Stenting of *Leith*, was a Favour to them, as being a Pendicle of *Edinburgh*, by proportioning a part of *Edinburgh's* Cess upon them there, as if they had been lookt on as a part of the Shire, and not a part of the Burgh, The Burden would have lyen more heavie upon them.

LEITH's Reply.

TO the second Answer, *Leith* Replies, That the Favour shewn them by *Edinburgh* in imposing, their Cess may be easily guest at, considering that the Cess payed by *Leith*, is the Summ of Whereas the Cess imposed upon the great Town of *Newcastle* upon *Tyne*, is only some few pence more Which unjust proportion, it not imaginable, could have been charged upon them by any Shire in *Scotland*, where they lived Men but of ordinary Discretion, neither is their proportion of Cess more unjust then the Reason thereof is false, viz: That *Leith* is a Pendicle of *Edinburgh*, whereas it cannot be made appear *Leith* is not, nor ever was either Part, Pertinent, or Pendicle of *Edinburgh*. And it was lately found by the Council, for Administration of Justice, That *Edinburgh* having imposed Excise upon the *West-port*, and other *Subburbs* about *Edinburgh*, as Pendicles of the Burgh. Yet they having found the same no Pendicle, did adjudge the Excise to belong to the Council of Excise, and no wayes to the Town of *Edinburgh*. As

*Leith's Claim.*

5. **A**S Barrons and pretended Superiority of late years, they have altered the Inhabitants of *Leith*, their Redendoes and Duties in their Old Charter, refusing to enter or Infeft them without such Duties were insert as they please.

Edinburghs Answer.

5. **T**O the third it is Answered, That alteration of the Vassals holdings Inhabitants of *Leith*, was duely the Town of *Edinburghs*, either upon just grounds in Law, or by the parties own consent.

Leiths Replies

5. **T**O the third, *Leith* Replies, That there can no just ground in Law be shown, why *Edinburgh* changed their Holdings; And they being their usurped Superiors, any little alteration the Law provides to be extorted, it being a maxim in Law, *qui potentior rogat imperat*; and it can be made appear, that any of these Articles were extorted.

Leith's Claim

6. **T**HEY hinder any of the Inhabitants to Grind Corn, sell Wine, Brew Ale, make Malt, sell Candles, Stearch, Prins, or the meanest Commodities of all, for entertainment of Families, and necessary for any Incorporation whatsoever.

Edinburghs Answer

6. **T**O the fourth it is Answered, That the Laird of Restalrig, Superior of *Leith*, did in Anno 1398, for himself and his Vassals, and Tennants of *Leith*, renounce any such priviledges of Girneling of Corns, or selling of Wine, &c.

Leiths Replies.

6. **T**O the 4th *Leith* Replies; First, *Restalrigs* (Anno 1398) being against Girneling of Corn, selling of divers, and Vendition of pettie Commodities, which are common to all Subjects, and necessary for all Incorporations, Lawfully be renounced by the Inhabitants of *Leith* themselves, or both by two Superiors their Names, without expresse Warrant. 2do. No such servitude could be imposed by any Superior after he is denounced of the propertie of his Lands, in favours of his Vassals; because if it were permitted to impose such servitudes upon their Vassals at any time; They then might make the propertie altogether, useles by imposing such Burdens thereupon, as would make the Vassals glad to be quite of his Land, providing they were free of the Burden. 3tio. The servitude contain the Renunciati-
ation, being in effect personal slavery to the Superiors, are exhibited by the Act of Union. Lastly, Though they were not Personal, but real predical servitudes: Yet *Edinburgh* as present Superior over *Leith*, could not acclaim any such servitudes from *Leith*, it being a Maxim in Law. *Confusio Domini tollitur servitutes qui Res sua nemini servit.*

LEITH's Claim.

5. **T**HEY will not permit any of their own Burgessees to Inhaabit within the Town of *Leith*, but necessitates them when they please, with their Families, to make their Residence at *Edinburgh*.

EDINBURGH's Answer.

5. **T**O the fifth it is Answered, That the Town of Edinburgh compels not each Burges to leave Leith, but only such as use Merchandize, who by the Law are bound to reside within Burgh's Royal.

LEITH's Reply.

5. **T**O the fifth, *Leith* Replies, That albeit it were allowed to exhibite the using of Merchandize in Groce, except within free Burghs, yet to exhibite all kind of Mercats, and selling so much as Pine or Candle by retaile, but forcing all such to repair and dwell in *Edinburgh*, if the Magistrates thereof please; There is no Law nor Statute commanding this. And any preceeding Custome in the Contrary, hath been a Tyranie called Usurpation.

LEITH's Claime.

6. **T**hey exact from the Merchants of all Goods imported, of what Value soever, at the Port of *Leith*, one Merk upon the Tun and Pack, of all Forraign Commodities that comes into *Leith* by Sea or Land. Which is not at any other Port of *Scotland*, to the ruine of the Port & Town. As also a Tax upone Wine, Tobacco, Strong Waters, which is at no other port.

EDINBURGH's Answer.

6. **T**O the sixth it is Answered, That for good Causes they have a Merk granted per Tun, of all Goods imported at *Leith*, by a publick Infeftment by King *Charles the first*, who being the Supream Magistrate, had power to impose the same. And it is an Argument of a distempered Spirit to assert the contrary, either in relation to the Merk, or to the Tax imposed upon Wine, Tobacco, or Strong Waters.

LEITH's Reply.

6. **T**O the sixth, *Leith* Replies, That albeit for publick Necessity of the Common Wealth, the Supream Magistrate may impose justly Taxes upon the whole Nation. Yet to impose a Tax upon one Town, for Relief of another Town's burdens, is of another Nature. And if at any time, the Supream Magistrate upon the privat Information of the one party, grant any such Taxation, the other private not being heard, it is alwayes permitted, and cannot in Justice be denied, That the partie grieved may notwithstanding of any such Grant, Represent his whole Reasons and Obligations, why if he had been heard, no such Gift could have been granted. And it were an Argument of Stupidity (which is the worst of Distempers, to assert the contrary.)

LEITH's Claime.

7. **T**hey necessitate all Merchants to make the first Offer of all Merchandize imported to the Town of *Edinburgh*, and in the mean time, while they delay to set the price upon the Commodities, the Merchant is either forst to sell as they please, otherwayes to loose his Mercat, as falls forth daily.

EDIN.

EDINBURGH'S Answers.

7. **T**O the seventh it is Answered, That the Necessity laid upon Merchants to make the first Offer of their Goods to a free Burgh, is to issue Extortion, and Forestallings, much conduceable for the Good of the Common Wealth.

LEITH'S Reply.

7. **T**O the seventh *Leith* Replies, That the Necessity of Offer of Merchandize to the Magistrates, for excusing of pretended Forestalling and Extortion, is a Remedy worse then the Decease, and the penalties mentioned in many Acts of Parliamen, against Forestallers, is a far easier and sure Care.

LEITH'S Claime.

8. **W**ithout publick Warrant at their own Hands, they Necessitate all Merchants to weight their Merchandizes at *Edinburgh's* publick Beam, set up in *Leith*, and to pay so much for the weight. As also, to pay so much for Ballast Money, by their own private Authority, without publick Warrant.

EDINBURGH'S Answer.

8. **T**O the eight it is Answered, That *Edinburgh* hath Right, and hath been in possession of a publick Beam, or Weigh-House these many Ages, and is for a publick End, To prevent false and deceitful Weights, and that the Ballast Money was done by agreement, ~~the magistrates of Edinburgh and Merchants of Leith.~~

Leiths Replies.

8. **T**O the eight *Leith* Replies, That the Ereccion of a Weigh-House at *Leith*, & the necessitating of Merchants to come there with their Goods, is done by *Edinburghs* private Authority. King *James* his Gift being of a Weigh-House in *Edinburgh*, which can relate nothing to the present Weigh-House in *Leith*. And there being greater penalties imposed in many Acts of Parliament, upon Commodities of Falsed, there needs in such as *Edinburghs* publick Beam to be Erected, for prevention thereof, nor can any alleadge Agreement past betwixt the Magistrates of *Edinburgh*, and certain Merchants, concerning the Ballast Money, that any person but these which made the Agreement.

LEITH'S Claim.

9. **T**hey meddle with *Leith's* whole Common Good and boxes, and disposes thereon, without Consent or Counsel of any of the Inhabitants of *Leith*.

EDINBURGH'S Answer.

9. **T**He ninth Grievance is positively denied by the Burgh of *Edinburgh*.

Leith's Reply.

9. **T**He ninth Grievance *Leith* is ready to make Good.

Leith

LEITH's Claim.

12. **L**Ast, they deprive them of all benefit of Mercats; So that if they need but a Loaf of Bread, they must repair to *Edinburgh* before they can have it publickly to Seal.

All which is humbly referred to the Consideration of the Honourable Council.

EDINBURGH's Answer.

12. **T**O the last it is Answered, That they may justly prohibit any Mercat within the Town of *Leith*, by vertue of their Superiority, and Grant from King James; It being a priviledge of all Superiors to have power of prohibition to any of their Vassals; And the Village of *Leith* is no Incorporation, but the Inhabitants thereof are only Fiewers of the Barrony of Restalrig.

Leiths Reply.

12. **T**O the Last, *Leith* Replies, That not only by the Contract and of Gift Bailery; But lso by many Acts of Parliament they are called and acknowledged. The Town and Incorporation of *Leith*, with power to hold Mercats (as appears particularly by the 92 Act of King James the 4th, the sixth Parliament) and using of such priviledge, being requisite and necessary for all such Incorporations; And used and accustomed by the meanest Village in Scotland, yet denying to *Leith*; It is clearly evident from this, what favourable Masters they have been and are now near this hundred years, who after having wrested from their own due priviledges usurped over them, and unsufferable and unparaleled Sovereignty, and the Gift granted by King James, not only Comprehends that, but many other Absurdities particularly set down in *Leiths* Dispute, too large to reside in this Abriyat, which are unsupportable in any Common Wealth, which are humbly recommended to your Lordships serious consideration.

This is an Abreviat of the Debate betwixt Edinburgh and Leith,
in Anno 1655, before the Council of SCOTLAND,
in the foresaid Year.

